

THE APPEAL PROCESS

If a local historic district commission has issued a Denial for proposed work in a historic district, the applicant shall not proceed with any exterior work on a resource, including demolishing or moving the resource, until the commission's decision is reversed or modified by a higher authority.

Before filing an appeal, every effort should be made to resolve all issues locally. An appeal should not be initiated when emotions are heated—appellants should make sure they have a reasonable case based on evidence before filing an appeal. If an applicant has:

- obtained new information to present to the historic district commission that may affect the commission's original decision, then the applicant should reapply for a certificate of appropriateness and present that information to the commission before filing an appeal.
- received a permit to do specified work and then changed the scope or the work without going back to the commission for approval, the applicant should strongly consider the merits of his/her case
- Done work without first obtaining a permit, the applicant should strongly consider the merits of his/her case

It is also important to remember that ignorance of the law is not a supportable defense.

Michigan's *Local Historic Districts Act*, enables an applicant aggrieved by a decision of a historic district commission to appeal that decision to the State Historic Preservation Review Board. The Review Board is an agency of the Michigan Department of History, Arts and Libraries (HAL). Its members are architects, architectural historians, historic preservationists, historians and archaeologists. The Review Board has authority to affirm, modify, or set aside a commission's decision and may order a commission to issue a certificate of appropriateness or a notice to proceed. The Review Board meets three times a year and typically decides an appeal at its next meeting after the date the appeal was filed.

HOW TO FILE AN APPEAL

The aggrieved party must send a written claim of appeal, in any form or format, within 60 calendar days after receiving a written notice of denial from the commission to: State Historic Preservation Review Board, Michigan Historical Center-SHPO, PO Box 30740, 702 W. Kalamazoo Street, Lansing, MI 48909-8240.

The claim of appeal must clearly state that it is an appeal, include a copy of the written denial from the historic district commission, and include the reason(s) the aggrieved party believes the commission's decision should be overturned. After a written claim of appeal has been received, the Review Board will direct HAL's Regulatory Affairs Office to schedule an administrative hearing for the purpose of receiving evidence and hearing arguments. The aggrieved party and the commission will be notified in writing of the scheduled time and date for the appeal hearing. Questions regarding submission of an appeal should be directed to 517-373-1630 or preservation@michigan.gov.

THE ADMINISTRATIVE HEARING

The administrative hearing is designed so that the aggrieved party may verbally present evidence and arguments to a presiding hearings officer in a quasi-judicial setting. The historic district commission is also allowed to present evidence and arguments at the hearing. This is the only time that evidence will be presented. Typically, the Review Board will not accept any evidence or hear any additional arguments at its regular meetings. Hearings are scheduled weekdays at 9:30 a.m. or at 1:30 p.m., or at other times upon order of the presiding officer. An average hearing

typically lasts one to two hours although some hearings may last considerably longer. The hearing begins with opening statements and the submission of evidence, including sworn testimony and questions from both the aggrieved party and the commission's legal representative, and ends with closing remarks. These hearings are tape recorded, and a copy of the transcript is available for a transcription fee. The presiding officer does not make a decision on the appeal at the time of the hearing. The hearing is simply the aggrieved party's opportunity to present evidence and arguments associated with the appeal. The presiding hearing officer will issue a recommended decision later in the case.

As an alternative to attending a hearing, an aggrieved party may choose to submit his/her evidence and argument to the presiding officer entirely in written form.

EVIDENCE

The aggrieved party has the burden of proof throughout the appeal process. He/she must be prepared to show how the commission has erred and why the commission's decision should be set aside or modified. To do this, a party must present evidence by mail or orally by attending an administrative hearing. If a party plans on attending a hearing, the party should prepare his/her evidence in advance and be able to present it in an orderly fashion. The party should make at least two copies of each proposed piece of evidence planned as an exhibit, one for the presiding officer and the second for the other party.

An aggrieved party must present certain evidence in every case:

- A copy of the written denial from the commission in response to the application
- A copy of any document that verifies that the aggrieved party has a legal interest in the property, such as a deed, purchase agreement, land contract, or long-term lease.
- Photographs that clearly show any work undertaken. All photographs should be labeled or have some form of written description next to the photo.

Evidence may consist of documentary materials pertinent to the case, such as plans and drawings, maps, repair estimates from a licensed contractor or appraiser, and other similar materials, and sworn testimony by a person who has inspected the resource and knows its condition.

If photographs of what is perceived to be similar work undertaken on other buildings in the district is to be used as evidence in support of a case, then the photographs must be accompanied by the date the work was undertaken (before or after the historic district was established) and a copy of the certificate of appropriateness that was granted by the commission. Simply presenting photographs of other resources in the neighborhood is not sufficient evidence.

THE APPELLANT AND LEGAL REPRESENTATION

An aggrieved party may represent themselves or have legal representation during the appeal process. An attorney representing an aggrieved party should file an appearance with the presiding officer before or at the administrative hearing. An attorney may assist the aggrieved party with filing the party's claim of appeal.

HISTORIC DISTRICT COMMISSION REPRESENTATIVE

The local historic district commission will send at least one representative to the administrative hearing. This representative may be a staff member who will testify, or it may be an assistant municipal attorney who will act as the commission's legal representative. Typically it is both. In addition, commissions usually submit file documents for entry into the official hearing record. The commission's legal representative will be expected to submit a copy of any applicable local

historic district ordinance, as well as any other pertinent local ordinance, local design review guidelines, or other local guidelines that are relevant to the case.

THE DECISION PROCESS

After the hearing, the presiding hearing officer will review the evidence and prepare a written Proposal for Decision. Copies of the proposal will be mailed to the members of the Review Board, to the aggrieved party or the party's attorney, and to the commission's legal representative prior to the Review Board meeting. If either party is dissatisfied with any aspect of the proposal, one or both may file written "exceptions to the proposal" with the Review Board. The Review Board will consider the case, along with the proposal and any exceptions filed, at its next regularly scheduled meeting and, after consideration of all materials, will issue a Final Decision and Order on the appeal. HAL's Regulatory Affairs Office will send copies of the Final Decision and Order to the parties and all legal representatives promptly upon issuance of that document. Typically, these decisions are issued within two to four months after receipt of the aggrieved party's claim of appeal.

APPEALS OF REVIEW BOARD DECISIONS

Any permit applicant who is dissatisfied with a Final Decision and Order may appeal to a court of competent jurisdiction. The circuit court with jurisdiction over the commission whose decision was appealed to the Review Board has jurisdiction in such court cases. Appeals to court must be filed within sixty calendar days after the Review Board has issued its Final Decision and Order.

APPEALS BY NON-APPLICANTS

Any citizen severely aggrieved by a historic district commission decision may appeal that decision to circuit court. Applicants for a certificate of appropriateness aggrieved by a historic district commission decision must first appeal to the State Historic Preservation Review Board according to the procedures above.